

AMENDED IN SENATE JUNE 30, 2009

AMENDED IN SENATE JUNE 11, 2009

AMENDED IN ASSEMBLY MAY 6, 2009

CALIFORNIA LEGISLATURE—2009–10 REGULAR SESSION

ASSEMBLY BILL

No. 471

Introduced by Assembly Member Nava

February 24, 2009

An act to amend Sections 11040 and 11042 of, and to add Sections 11042.1, 11042.2, 11042.3, and 11046 to, the Government Code, relating to legal services.

LEGISLATIVE COUNSEL’S DIGEST

AB 471, as amended, Nava. Legal services.

Existing law requires certain state entities to obtain written consent from the Attorney General before employing legal counsel in any judicial proceeding.

This bill would recast these provisions, define terms for their purposes, and state several factors the Attorney General may consider when considering consenting to a state agency, commissioner, or officer employing in-house counsel or outside counsel, as defined.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 11040 of the Government Code is
2 amended to read:

1 11040. (a) This article does not affect the right of any state
2 agency or employee to employ counsel in any matter of the state,
3 after first having obtained the written consent of the Attorney
4 General.

5 (b) It is the intent of the Legislature that overall efficiency and
6 economy in state government be enhanced by employment of the
7 Attorney General as counsel for the representation of state agencies
8 and employees in judicial ~~and~~ or other proceedings.

9 The Legislature finds that it is in the best interests of the people
10 of the State of California that the Attorney General be provided
11 with the resources needed to develop and maintain the Attorney
12 General's capability to provide competent legal representation of
13 state agencies and employees in any judicial proceeding.

14 (c) Except with respect to employment by the state officers and
15 agencies specified by title or name in Section 11041 or when
16 specifically waived by statute other than Section 11041, the written
17 consent of the Attorney General is required prior to employment
18 of outside counsel for representation of any state agency or
19 employee.

20 SEC. 2. Section 11042 of the Government Code is amended
21 to read:

22 11042. A state agency, commissioner, or officer may employ
23 in-house ~~legal~~ counsel to provide legal services. However, except
24 as otherwise specifically provided in this article or another statute,
25 only the Attorney General, or one of his or her assistants or
26 deputies, shall represent a state agency, commissioner, or officer
27 in relation to a judicial or other proceeding in which the agency,
28 commissioner, or officer is interested, or is a party as a result of
29 office or official duties, unless express written consent is given by
30 the Attorney General to employ in-house counsel.

31 SEC. 3. Section 11042.1 is added to the Government Code, to
32 read:

33 11042.1. Nothing in this article prohibits a state agency,
34 ~~commissioner~~, *commissioner*, or officer from obtaining legal services
35 from the Attorney General that are unrelated to a judicial or other
36 proceeding.

37 SEC. 4. Section 11042.2 is added to the Government Code, to
38 read:

39 11042.2. When the Attorney General consents to a state agency,
40 commissioner, or officer employing in-house counsel or outside

1 counsel in a judicial or other proceeding, the Attorney General
2 may intervene in the proceeding or appear as amicus curiae to the
3 extent permitted by the court.

4 SEC. 5. Section 11042.3 is added to the Government Code, to
5 read:

6 11042.3. In determining whether to give consent to a state
7 agency, commissioner, or officer to employ in-house counsel or
8 outside counsel in a judicial or other proceeding, and the extent
9 of such consent, the Attorney General may consider the factors of
10 conflicts of interest, the staffing needs of the Office of the Attorney
11 General, and the availability of subject matter expertise.

12 SEC. 6. Section 11046 is added to the Government Code, to
13 read:

14 11046. For purposes of this article and unless otherwise
15 specifically stated, the following definitions shall apply:

16 (a) “In-house counsel” means a licensed attorney employed in
17 state service by a state agency, commissioner, or officer.

18 (b) “Judicial or other proceeding” means litigation in a civil
19 court, an administrative adjudicatory proceeding governed by the
20 Administrative Procedure Act (Chapter 4 (commencing with
21 Section 11370)) or by the United States Administrative Procedure
22 Act (5 U.S.C. 551, *Sec. 551* et seq.), or an arbitration proceeding.
23 Administrative adjudicatory proceedings before the State Personnel
24 Board, the Department of Personnel Administration, or the
25 Unemployment Insurance Appeals Board are exempt from this
26 definition.

27 (c) “Outside counsel” means a licensed attorney engaged in the
28 private practice of law.